

Opinion issued June 30, 2011.



In The
Court of Appeals
For The
First District of Texas

NO. 01-11-00369-CV

**IN RE LIBERTY LLOYDS OF TEXAS INSURANCE COMPANY,
LIBERTY MUTUAL INSURANCE COMPANY, AND ROBERT LITTLE,
Relators**

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relators, Liberty Lloyds of Texas Insurance Company, Liberty Mutual Insurance Company, and Robert Little (collectively "Liberty"), filed a petition for

writ of mandamus, challenging the trial court's order denying their motion to compel appraisal and abate the underlying insurance case.¹

Liberty's petition questions the circumstances under which a party waives its contractual right to appraisal. During the pendency of the petition, the Texas Supreme Court issued an opinion providing important guidance on that very issue. *See In re Universal Underwriters of Tex. Ins. Co.*, No. 10-0238, 2011 WL 1713278, at *2–7 (Tex. May 6, 2011). Real parties in interest, Omar Benetiz and Reina Benitez, thereafter withdrew their objection to appraisal and asked the trial court to modify its order denying Liberty's motion to compel appraisal and abate. Although the Benitizes agreed to appraisal, they continued to contest abatement. Pursuant to the Benitizes' request, the trial court (1) vacated its earlier order denying Liberty's motion to compel appraisal and abate, (2) granted Liberty's motion to compel appraisal, and (3) denied Liberty's request to abate. Liberty has not filed an additional or supplemental petition challenging the trial court's new order. Nor has Liberty responded to the Benitizes' suggestion that the issues raised in the petition are now moot.

Given that the trial court has vacated the order that is the subject of Liberty's petition, we conclude that Liberty's petition no longer presents anything for our

¹ The underlying case is *Omar Benitez and Reina Bermudez-Benitez v. Liberty Lloyds of Texas Insurance Company, Liberty Mutual Insurance Company, and Robert Little*, No. 2010-13166, in the 11th District Court of Harris County, Texas, the Honorable Mike Miller presiding.

review. *See, e.g., In re Cnty. of El Paso*, 104 S.W.3d 741, 743 (Tex. App.—El Paso 2003, orig. proceeding). Accordingly, Liberty’s petition is dismissed as moot, and all outstanding motions are also dismissed as moot.

PER CURIAM

Panel consists of Chief Justice Radack and Justices Sharp and Brown.